IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION No. 6452 of 2004

Between:

Dondeti Venkateshwara Rao, s/o Achaiah Naidu,
6/860 R.S.Road, Rajampet, Kadapa District.

..... PETITIONER

and

1 The Collector & District Magistrate, Kadapa.
2 Chief Secretary, Government of Andhra Pradesh, Hyderabad.
3 The Superintendent of Central Prison, Cherlapally, R.R.District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ order or direction particularly one in the nature of writ of Habeas Corpus to order for the production of petitioner D.Venkateshwara Rao, s/o Achaiah Naidu from Central Jail, Cherlapally, R.R.District before this Hon'ble Court from the unlawful detention from jail and to set him to liberty, henceforth and to declare the proceedings of the respondent for detention of petitioner under P.D.Act as illegal.

Counsel for the Petitioner : M/s.M.RAJASEKHARA REDDY &
M.VENKATA RAMANA REDDY

Counsel for Respondents : THE ADVOCATE GENERAL

The Court made the following :

JUDGMENT: (per **C.V. RAMULU,J)**

This Writ Petition is filed seeking a Writ of Habeas Corpus to direct the respondents to release the petitioner – Dondeti Venkateshwara Rao (detenu) - who is now detained in Central Prison, Cherlapalli, Ranga Reddy district by invoking the provisions of sub-Section (2) of Section 3 of the Andhra Pradesh Prevention of Dangerous Activities of Boot- leggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act,1986 (hereinafter referred to as 'the Act'), by declaring detention order dated 17-2-2004 passed by the 1st respondent in his Proceedings Ref.C1/1206-A/M/03 as illegal.

The impugned detention order has been passed against the petitioner on the ground that he is indulging in illicit cutting, storing and transportation of Red Sanders heartwood causing damage to the public property besides tremendous loss of national wealth and depletion of green cover resulting in adverse ecological balance having ramification on the health and well being of the public, which is prejudicial to the maintenance of public order and in proof of such subjective satisfaction, the Collector and District Magistrate, Cuddapah – 1st respondent herein –relied upon three incidents in which the detenu was alleged to be involved. In pursuance of the said order, the detenu was arrested and detained in Central Prison, Cherlapalli. The impugned detention order was approved by the State Government in G.O.Rt.No.1675, dated 8-4-2004. In the meanwhile, the Advisory Board reviewed the case of the petitioner on 29-3-2004 and was of the view that there was sufficient cause for his detention. The petitioner gave explanation to the 1st respondent stating that he had shifted his place of residence to Hyderabad and he is ready to face the prosecution in Crime No.50/2003-04 for the offences punishable under Section 379 IPC and Section 20(I) C II, III and X of A.P.Forest Act,1967, (2) O.R.No.51/2003-04 under Section 379 IPC and Section 20(I) C II, III and X of A.P.Forest Act and (3) O.R.No.52/2003-04 under Section 379 IPC and Section 20(I) C II, III and X of A.P.Forest Act,1967. The representation made by the petitioner to the Government

was rejected by the Chief Secretary to Government on 8-4-2004.

A detailed counter affidavit has been filed by the 1st respondent denying the allegations made by the petitioner. It is *inter alia* stated that the detenu is a notorious smuggler, who has been evading the arms of law for many years past. Red Sanders is a precious forest produce, which has great export value. The detenu and his accomplices were finally intercepted on 12-11-2003, 16-11-2003 and 18-11-2003 when they were removing red sander logs. On two occasions, the detenu ran away and on the third occasion, he was arrested and the vehicle used for transportation of contraband was seized. Cases have been filed in courts, but the detenu was granted bail. The investigation reveals that the detenu has been carrying these operations for several years past. The manner in which the detenu carried out the operations at short intervals despite being intercepted reveals that he is habituated to these smuggling (antisocial) operations, which are disturbing public order. The detenu was caught red handed and he confessed his guilt and gave an undertaking; therefore, he cannot claim innocence. The grounds raised at paragraph-8 of the affidavit filed in support of the writ petition are neither relevant nor tenable. Further, the plea of lack of *bona fides* and arbitrariness is baseless. The other ground of health reasons is also not tenable, since the alleged kidney transplantation had taken place more than a decade ago and that does not render him incompetent to commit the offences alleged. Therefore, the writ petition is liable to be dismissed.

Sri M. Venkata Ramana Reddy, learned counsel appearing for the petitioner, contended that the petitioner cannot be characterized to be a ‘goonda’ and no public order or public peace said to have been disturbed because of the acts attributed to the petitioner. No complaint of any nature from any corner of the society was filed at any point of time against the petitioner. The provisions of the Act are not attracted to detain the petitioner as a preventive measure. The 1st respondent, in all, based upon his decision three grounds; but, the first and second grounds were not at all made out even according to the counter affidavit. The allegation of the respondents is only that the petitioner ran away and he was not arrested. Further, sofar as the third incident on 18-11-2003 was concerned, a crime was registered and the petitioner had obtained bail through a Court of law and as such, absolutely, there was no necessity of invoking the provisions of the Act and detaining the petitioner, which is nothing but arbitrary and illegal. The petitioner can neither be called a ‘goonda’ nor acted in a manner prejudicial to the maintenance of public order.

Learned counsel invited our attention to Sections 2(a) and 2(g) of the Act, which read as under:

> "**2(a)** "*acting in any manner prejudicial to the maintenance of public order*" means when a boot-legger, a dacoit, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order.
>
> Explanation:-- For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely *inter alia*, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health."
>
> **2(g)** "goonda" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code.

and submitted that the petitioner had not acted in a manner prejudicial to the maintenance of public order and the Explanation to Section 2(a) of the Act makes it very clear that the activities of any of the persons referred to in the clause, directly or indirectly, is causing or calculated to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health. Further, even assuming that the petitioner can be characterized as a 'goonda' as contemplated under Section 2(g) of the Act, he should be a person either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abets the commission of offences punishable under the chapters referred to in the Section. It is not the case of respondent No.1 that the activities of the petitioner are harmful, danger, alarming or causing feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health, nor he had involved in any habitual activities of such nature. Insofar as the first two incidents referred to in the detention order is concerned, the petitioner's presence was only suspicious and insofar as the third incident was concerned, he was already enlarged on bail and as his kidney was transplanted, there is no scope for him to indulge in the activities or to commit them habitually. Therefore, absolutely there is no ground for the 1st respondent to invoke the provisions of the Act and curtail the liberty of the petitioner, which is contrary to Article 21 of the Constitution of India. In support of his contentions, the learned counsel relied upon the decisions in ***VIJAY NARAIN SINGH V. STATE OF BIHAR,*** **B.C. SUBBARAYUDU v. DISTRICT COLLECTOR**

and **K. RAMANAMMA v GOVT. OF A.P. & OTHERS.**

In **VIJAY NARAIN SINGH**'s case (1 supra), the apex Court held as under:

"32. In the present case the District Magistrate has relied on three incidents to hold that the petitioner is an anti-social element. They are — (*i*) that on April 15, 1975 the petitioner along with his associates had gone to the shop of a cloth dealer of Bhagalpur Town armed with an unlicensed pistol and had forcibly demanded subscription at the point of a gun and (*ii*) that on June 17/18, 1982 the petitioner was found teasing and misbehaving with females returning from a cinema hall. The third ground is the criminal case now pending against the petitioner in the Sessions Court. The first incident is of the year 1975. It is not stated how the criminal case filed on the basis of that charge ended. The next incident relates to the year 1982. The detaining authority does not state how the criminal case filed in that connection terminated. If they have both ended in favour of the petitioner finding him clearly not guilty, they cannot certainly constitute acts or omissions habitually committed by the petitioner. Moreover the said two incidents are of different kinds altogether. Whereas the first one may fall under sub-clause (*i*) of Section *2*(*d*) of the Act, the second one falls under sub-clause (*iv*) thereof. They are, even if true, not repetitions of acts or omissions of the same kind. The District Magistrate does not appear to have applied his mind to the above aspects of the case. The third ground which is based on the pending Sessions case is no doubt of the nature of acts or omissions referred to in sub-clause (*i*) of Section *2*(*d*) but the interval between the first ground which falls under this sub-clause and this one is nearly eight years and cannot, therefore, make the petitioner a habitual offender of the type falling under sub-clause (*i*) of Section *2*(*d*). When I say so I do not certainly minimise the gravity of the offence alleged to have been committed by the petitioner which is still to be tried by the Sessions Court. If the petitioner is found guilty by the Court, he will have to be awarded appropriate punishment. But the point for consideration now is whether the filing of the charge-sheet is sufficient to bring the petitioner within the mischief of the Act. The Court should examine the case without being overwhelmed by the gruesomeness of the incident involved in the criminal trial. It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court.

In **SUBBARAYUDU's** case (2 supra), this Court held as under:

"6…….Everyone who answers the description of boot-legger cannot be detained preventively under the Act. The detaining authority must be satisfied that the detention is necessary with a view to preventing the person concerned from acting in any manner 'prejudicial to the maintenance of public order'(vide Section 3(1)……..It is, therefore, clear that a person, who is a boot-legger by reason of his indulging in acts in contravention of the provisions of the A.P.Excise act, the rules and the notifications and the orders made under that Act cannot be detained under Section 3(1) of the Act unless the acts in which he is indulging affect or likely to affect adversely the maintenance of public order. In other words, only if the activities of the boot-legger cause 'grave or widespread danger to life or public health' he can be detained. If a boot-legger sells illicitly distilled arrack which contains harmful substances, certainly he can be detained on the ground that his activities constitute grave danger to life or public health.

In **K. RAMANAMMA**'s case (3 supra) it was held as under:

"A person cannot be detained on a mere ground that he is a 'goonda'. His activities must be found to be prejudicial to the maintenance of public order disturbing the peace and tranquility of the locality. The activities of the detenu directed against particular individuals cannot be said to be affecting the maintenance of 'public order' ".

Whereas, the learned Advocate General appearing for the respondents submitted that, in all, the detenu involved in three offences, which had close proximity, the first one was on 12-11-2003, second on 16-11-2003 and the third on 18-11-2003; therefore, it could easily be characterized that the detenu was a habitual offender and the contention of the petitioner that he was not involved in the offences in the first two instances and in the third instance he was granted bail, is untenable, since the petitioner has confessed the guilt. He further contended that the Advisory Board, after hearing the detenu and his family members held that there was sufficient cause for detention of the petitioner, by Proceedings dated 29-3-2004. He also contended that in a given case, on the basis of a solitary instance, a person could be termed as a dangerous person and it all depends upon the degree of incident and its impact. In the instant case, the petitioner involved in three incidents of illicit cutting, storing and transportation of red sanders heartwood causing wilful destruction and damage to the public property besides tremendous loss of national wealth and depletion of green cover resulting in adverse ecological balance having ramification on the health and well being of the public. In this regard, the learned Advocate General drawn attention of this Court to a Judgment of the apex Court in ***AMANULLA KHAN KUDEATALLA KHAN PATHAN v. STATE OF GURAJAT*** in which it was held as follows:

> 4. Mr. Anil Kumar Nauriya, the learned counsel appearing for the detenu in this Court reiterated the same contention namely that a single incident in which the detenu is alleged to be involved and for which the criminal case had been registered will not be sufficient to hold the detenu to be a "dangerous person" under Section 2(c) of the Act inasmuch as the expression "dangerous person" has been defined to be a person who either by himself or as a member or leader of a gang, during a period of three successive years, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959. In other words according to the learned counsel unless the activities of the detenu considered by the detaining authority indicate that he has either habitually committed or attempted to commit or abet the commission of offence, cannot be held to be a "dangerous person" under Section 2(c) of the Act. The expression "habitually" would obviously mean repeatedly or persistently. It supplies the threat of continuity of the activities and, therefore, as urged by the learned counsel for the petitioner an isolated act would not justify an inference of habitually commission of the activity. In this view of the matter the question that requires adjudication is whether the satisfaction of the detaining authority in the present case is based upon the isolated incident for which the criminal case was registered or there are incidents more than one which indicate a repeated and persistent activity of the detenu. If the grounds of detention is examined from the aforesaid stand point, it is crystal clear that apart from the criminal case which had been registered against the detenu for having formed a gang and hatched a conspiracy to extort money from the innocent citizens by threatening them and keeping them under constant fear of death, the two witnesses examined by the detaining authority narrated the incident that happened on 26-7-98 and 2-8-98 in which the detenu was involved and on the first occasion a sum of Rs.1 lakh was demanded and when the person concerned refused, he was dragged and assaulted and on the second occasion a sum of Rs.50 thousand was demanded and on refusal, the persons were dragged on the road and

were beaten on the public road. It is not the grievance of the detenu that the statements of the aforesaid two witnesses had not been appended to the grounds of detention or had not been mentioned in the grounds of detention. In fact the grounds of detention clearly mention the aforesaid state of affairs and there is no bar for taking these incidents into consideration for the satisfaction of the detaining authority that whether the person is a "dangerous person" within the ambit of Section 2(c) of the Act. We, therefore, fail to appreciate the first contention raised by the learned counsel for the petitioner that the satisfaction of the detaining authority that the detenu is a "dangerous person" is based upon the solitary incidence in respect of which a criminal case has alr5eady been registered. In our considered opinion the detaining authority has considered the three different incidents happened on three different dates and not a solitary incidence and, therefore, the test of repeatedness or continuity of the activity is fully satisfied and the satisfaction of the detaining authority holding the detenu to be a "dangerous person" is not vitiated in any manner. The contention of the learned counsel for the petitioner therefore stands rejected.

We have gone through the entire material on record including the record produced by the learned Advocate General.

As seen from the above, the grounds of detention itself show that the detenu was arrested and was enlarged on bail insofar as the third incident is concerned. Insofar as the first and second incidents were concerned, the contention of the respondents that the detenu ran away from the spot and as such, it must be deemed that he is a habitual offender and can be characterized as a ‘goonda’ under Section 2(g) of the Act, apart from the fact that the acts committed by the detenu resulted in prejudice to the maintenance of public order and even a solitary incident could be proved to be dangerous, cannot be accepted. In view of the Explanation under Section 2(g) of the Act and also in the light of the ratio laid down in the decisions relied upon by the learned counsel for the petitioner in **VIJAY NARAIN SINGH’s** case (1 supra)**, B.C. SUBBARAYUDU’s** case (2 supra) and **K.RAMANAMMA’s** case (3 supra), the Judgment in **AMANULLA KHAN’s** case (4 supra) has no relevance to the facts of this case. That was a case where the detenu was extorting money from the people by putting them to fear of death and on their refusal dragging them on the road and assaulting them. Persons were dragged on the roads and were beaten on the public roads. The test of repeatedness or continuity of activity was fully satisfied, and, therefore, the satisfaction of the detaining authority holding the detenu to be a ‘dangerous person’ was not vitiated in any manner. In the instant case, all the three purported incidents occurred within a span of six (6) days and according to the first respondent, in the first two incidents, the petitioner could not be caught and he ran away from the place, whereas in the third incident he was caught hold of redhanded and has since been enlarged on bail. Assuming that the detenu would fall in the definition of ‘goonda’, the ingredients of the Explanation to Section

2(g) of the Act are not at all satisfied. It is essential that the public order is adversely affected directly causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health. None of such ingredients were made out by the 1st respondent to detain the petitioner under the provisions of the Act. The law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardized, unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an accused who is involved in a criminal prosecution. The general criminal law has already taken care of the situation and this is not a case where the provisions of the Act could be invoked and the petitioner is deprived of his personal liberty. In the light of the ratio laid down in the decisions relied on by the learned counsel for the petitioner and in view of the aforementioned reasons, the impugned order passed by the 1st respondent is liable to be set aside.

In the result, the writ petition is allowed. The impugned order dated 17-2-2004 passed by the 1st respondent in his Proceedings ROC.C1/1206-A/M/03 is quashed. The petitioner (detenu), who is now detained in the Central Jail, Cherlapalli, Ranga Reddy district, shall be released forthwith, unless his presence is required in connection with any other offence.

(DEVINDER GUPTA, CJ)

3re August,2004

(C.V. RAMULU,J)

prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the third day of August Two thousand and four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Collector & District Magistrate, Kadapa.
2 Chief Secretary, Government of Andhra Pradesh, Secretariat, Hyderabad.
3 The Superintendent of Central Prison, Cherlapally, R.R.District (By Special Messenger).

4. 2 CCs to the Advocate General (O.U.T.)